

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

Mst.Dhapa & Ors. V/S Board of Revenue, Raj. & Ors.

S.B.CIVIL WRIT No. 2421 of 1994

UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA.

Date of order : 2nd February, 2007

PRESENT

HON'BLE SHRI N.P.GUPTA, J.

Mr. Sudhir Sharma, for the petitioner.
Mr. B.S. Sandhu, for the respondent.
Mr. O.P. Boob, AGA.

BY THE COURT:

By this petition, the petitioner seeks to challenge Annex.7, the judgment of the Board of Revenue dated 6.10.93, allowing the second appeal of the present respondent No.4, and thereby ordering regularisation of the land in favour of the private respondent No.4 after realising compounding fees, and dismissing the application for regularisation filed by the petitioner.

Bereft of unnecessary details, the facts of the case are, that one Shradhanand purchased the land in question in open auction from the Colonisation Department

on 21.9.62, and was issued Sanad in May 1971, during this interregnum period, on 29.9.64 Shradhanand sold the land to the respondent no. 4, hereafter to be referred as the Samiti, by registered sale deed dated 29.6.64, and on that basis necessary mutations were effected, and the land was entered in the Khatedari of the Samiti. The fact however did remain that before effecting such sale, the purchaser did not obtain permission from the competent authorities, as contemplated by Section 13 of the Rajasthan Colonisation Act, 1954 hereafter to be referred to as the Act. Thereafter Shradhanand died without adopting any disciple, and his Guru Sevanand executed an agreement to sale with respect to land in question in favour of the petitioner (deceased Udmiram) on 25.1.83. Even this time also, no permission was obtained under Section 13.

It is, in these circumstances, that Udmiram and Samiti both filed applications under Section 13A for regularisation of sale by receiving compounding fees, and both the applications were disposed of by the Additional Collector vide order dated 8.8.84 Annex.3, and by this order, the application filed by the Samiti was dismissed, and the one filed by Udmiram was accepted, and the order given on 27.7.84 was maintained. It was found by the learned Additional Collector, that from the reports of the Patwari it transpires that the land was in possession of Udmiram. The agreement in favour of Udmiram is of a date

subsequent to the grant of Sanad, while the sale deed in favour of the Samiti is of a date much anterior to the grant of Sanad, by which time, Shradhanand did not acquire Khatedari rights, and under Section 13A also, it is only where the transfer is effected by a Khatedar, which could be regularised. Inter-alia with these reasonings, the above order was passed.

Aggrieved of this order, an appeal was filed by the Samiti, and maintaining these very findings of the learned Additional Collector, the appeal was dismissed vide order Annex.5 dated 25.9.86.

Against this, a second appeal was filed before the learned Board of Revenue, which came to be allowed vide impugned order Annex.7 dated 6.9.93. The learned Revenue Board found, that Section 13A was inserted to validate the transfers made in contravention of Section 13 by charging compounding fees. Then it was noticed, that it is not in dispute, that registered sale deed was executed in favour of the Samiti before grant of Sanad, which was granted on 31.5.71, on that day, Shradhanand was not Khatedar. Then learned Board of Revenue referred to the further amendment made in Section 13A w.e.f. 29.7.89, whereby another Clause was inserted to validate the transfers made by persons, who had not acquired Khatedari rights. It was also noticed, that after transfer by registered sale deed on 29.9.64,

Shradhanand had filed a suit against the Samiti on 15.2.78, and that suit was got dismissed on 20.11.84, as not pressed. In view of the above, the two orders of the learned Additional Collector and the learned Revenue Appellate Authority were set aside, and the impugned order was passed.

It may be noticed here, that the further amendment effected in Section 13A was effected after passing of the order of the learned Revenue Appellate Authority, which, as noticed above, is dated 25.9.86, and the amendment is w.e.f. 29.7.89.

The clause introduced by amendment dated 29.7.89 reads as under:

"Sec.13-A. Validation of certain transfers and declaration of consent to transfer.-(1) Notwithstanding anything contained in section 13, or in any other provisions of this Act or in the Rules made or statement of conditions issued thereunder, but subject to sec.42 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), where any transfer in whom khatedari rights have vested by or under this Act in contravention of sub-section (1) of section 13 at any time before the commencement of the Rajasthan Colonisation (Amendment) Act, 1983, such transfer, sub-lease or charge may, on an application being made to the Collector in this behalf in such Form as may be prescribed and within 1425 days of such commencement i.e. upto 30.6.1987 by the transferor, lessor or as the case may be, the person creating the charge or by the purported transferee sub-lessee or, as the case may be, charge-holer or by any subsequent purported transferee, sub-lessee or, as the case may be, charge-holder, be declared, after holding such enquiry as he deems proper, as valid by him subject to any of such

persons as aforesaid making payment to the State Government, in the case of irrigated land of an amount of Rs.20,000/- per 25 bighas and in the case of barani or uncommand land of an amount of Rs. 4,000/- per 25 bighas or of an amount equal to the allotment price of the land prescribed by the Government in the statement of conditions issued under sub-section (2) of section 7 or in any rule made under this Act and in force on such commencement, whichever is less in four equal instalment as follows:-

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| (a) in the case of an application made upto 31.12.1984; | the first, second, third and fourth instalment shall be payable respectively on 31.12.1984, 30.6.1985, 31.12.1985 and 30.6.1986; |
| (b) in the case of an application made after 31.2.1984 but before the date of publication in the Official Gazette of the Rajasthan Colonisation (Amendment) Ordinance, 1986 | the first instalment shall be payable within fifteen days from the date of such publication & the second, third and fourth instalments shall be payable respectively within fifteen days, six months and one year from the date of the order of the Collector; and |
| (c) in the case of an application made on or after the date of such publication; | the first instalment shall be payable alongwith application and the second, third and fourth instalments shall be payable within the periods specified for such instalments in clause (b). |

Provided that the State Government may on being satisfied that it is necessary or expedient to do so extend by notification the period beyond 30th June, 1987, not exceeding [five years and] six months, upto the day as deemed fit; and

Provided further that where any of the aforesaid persons pays to the State Government the entire compounding fee in one lump-sum alongwith his application and within the period specified in this sub-section the amount of compounding fee payable by him shall be deemed to be 25% less than that provided therein.

(1-A) Where an allottee, in whom khatedari rights have not been vested, even after seven years of allotment, under condition 9 of General Colony Conditions, has transferred the land allotted to him

or any, right therein, in contravention of sub-sec. (1) of section 13 of this Act, before the commencement of the Rajasthan Colonisation (Amendment) Ordinance, 1988 (Ordinance No.9 of 1988) the Collector on receiving an application from the allottee and the purported transferee in this behalf, in the prescribed form, within 297 days of the commencement of the Rajasthan Colonisation (Amendment) Ordinance, 1988 (Ordinance No. 9 of 1988) or within such period, as may be extended by the Government from time to time may subject to the provision of S.42 of the Rajasthan Tenancy Act, 1955 (Raj. Act No. 3 of 1955), declare such transfer valid after holding such enquiry as he deems proper, subject to payment of all dues of the State Government by the transferee and also subject to the payment of sum of Rs.50,000/- per 25 bighas to the State Government in case of irrigation or command land a sum of Rs. 10,000/- per 25 bighas in case of barani or uncommand land in four half yearly equal instalments. Such transferee, shall thereafter be entitled to khatedari rights under the Rajasthan Tenancy Act, 1955 (Rajasthan Act No. 3 of 1955):

Provided that where any of the aforesaid persons pays to the State Government the entire compounding fee in one lump-sum alongwith his application and within the period specified in this sub-section, the amount of compounding fee payable by him shall be deemed to be 25% less than provided therein.

Explanation:- For the purposes of this sub-section,-

(a) "allottee" means the person to whom land has been allotted on price under the rules made under this Act; and

(b) "dues" in relation to the land allotted, shall include unpaid price of such land and such other dues are required under law to be paid by the allottee."

The whole gravamen of the judgments of the learned Additional Collector and the learned Revenue Appellate Authority is, that the sale effected in favour of the Samiti in the year 1964 was effected prior to grant of Sanad, while the agreement to sale in favour of Udmiram was

executed after grant of Sanad. In my view, in view of sub-section (1A), as introduced by amendment of 29.7.89, this ground, as taken by the learned two authorities below is completely wiped out, and has rightly been so found by the learned Board of Revenue.

There is yet another aspect of the matter, viz. that Section 13 and 13A talk of "transfer", while so far the petitioners are concerned, Udmiram only had agreement to sale in his favour, which was executed on 25.1.83 and admittedly, no sale deed has been executed in his favour, or in favour of his legal representatives, even till the date. It is established law, that agreement by itself does not transfer title. Admittedly no legal proceedings had been initiated by the promisee under the agreement dated 25.1.83, for its performance. As against this, Samiti has a registered sale deed in its favour, being dated 29.9.64. The question of passing of the title in the immovable property is a subject, which is clearly comprehended by the provisions of Transfer of Property Act, coupled with the provisions of Indian Registration Act, and as such, sale of immovable property worth more than Rs. 100/- cannot be effected otherwise than by registered sale deed. So far as the provisions of Colonisation Act are concerned, they do not in any manner override the Transfer of Property Act, or the Registration Act, for that matter; these provisions only impose additional conditions, or restrictions, against

the alienability of the property, and stipulates a penalty for alienation having been made in violation of the restrictions, but then the alienation has to be made in accordance with the provisions of Transfer of Property Act. That being the position, the transfer of Property by Shradhanand in favour of the Samiti was complete, as soon as the land was sold by registered sale deed dated 29.9.64. And but for the restrictions or conditions imposed by the Act, the transfer by Shradhanand would have been valid, and would have conferred valid title in the purchaser. Obviously with consequence, that Shradhanand did not retain any alienable right, so as to entitle Shradhanand, or his successor, to confer, or even purport to pass, any title in Udmiram. It is significant to note, that even in case it is found, that transfer in favour of Samiti was in violation of the provisions of the Act, and even if it were to be found that it could not be regularised, still it does not have the effect of reviving the title of the transferor, which he had transferred vide sale deed dated 29.9.64. The consequences for such violation are provided in the rules and relevant conditions, which do not contemplate the above situation. The above consequence is, that qua Shradhanand, or his successor, the title of the Samiti was perfected with execution of the registered sale deed dated 29.9.64. Consequently in the first place, Udmiram did not get any right, title or interest in the land by agreement dated 25.1.83, as it cannot be said to be tantamounting to a

"transfer" within the meaning of Section 13 or Section 13A, and obviously after introduction of sub-section (1A), the Samiti is entitled to have the transaction regularised by paying the compounding fees, as found by the learned Board of Revenue, and in my view, rightly.

A submission was made by learned counsel for the petitioner, by referring to Annex.5 and 6, that the Samiti had filed the application Annex.5 in the year 1989, which was dismissed vide Annex.6, for non-appearance/non-prosecution, therefore, so far Samiti is concerned, its chapter stands closed. Suffice it to say, that a look at Annex.3 shows, that both the parties had filed applications for regularisation, and both the applications were disposed of vide Annex.3, and the matter culminated into Annex.7. In such circumstances, merely because an ill advised application was again filed subsequently, which was dismissed, is hardly of any adverse consequence against the Samiti.

The net result of the aforesaid discussion is, that I do not find any ground to interfere with the order Annex.7. The writ petition is, therefore, dismissed. The parties shall bear their own costs.

(N. P. GUPTA) , J.

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